

EXHIBIT A

1 Judge: I will note the appearances on the appearance
2 sheet. We're ready to proceed.

3 Austin: Thank you, Your Honor. For the record I'm Jes
4 Austin with Paul Hastings Demask and Walker. I'm
5 the counsel for Northwestern Corporation. We are
6 here on the regularly scheduled under this
7 hearing that was set this afternoon in the case,
8 we have published an agenda, and we distributed
9 an amended agenda, with respect to today's
10 hearing and there are, I believe, there were 12
11 items noted on the agenda and as we've done in
12 the past, I'm going to let Ms. Dennistein go
13 through this agenda based on where things are, I
14 can advise the Court that most of the matters are
15 either resolved by agreement or stipulation. One
16 of the other major matters was a motion for the
17 forming of an equity committee has been at the
18 request of the advance pulled from today's
19 calendar and will be set on a future calendar, so
20 that I believe that the only contested matter
21 that we will have today is a motion that was
22 filed by Magten for relief from the automatic
23 stay as well as a motion dealing with an

1 expansion of investigatory time related to the
2 committee and CS First Boston Credit Agreement.
3 We have had certain additional parties join in
4 the Magten motion and obviously we, on behalf of
5 the debt, have filed papers in opposition, so
6 that's the only real contested matter we have
7 today, but I'd like Ms. Denniston to run through
8 the agenda to advise the Court on the
9 developments of everything else that is
10 acceptable. Thank you. Please.

11 Ms. Denniston: Good afternoon Your Honor. The first
12 agenda item is the status conference re Verified
13 Complaint, Northwestern against American Electric
14 Power. The appointees are in the process of
15 exchanging information and has scheduled a
16 meeting to discuss settlement. We have that
17 meeting, we'll take, are in the process of
18 scheduling a meeting, that meeting is expected to
19 take place in the next two week sand we would
20 like to continue this to the May 17th hearing.

21 Judge: So ordered.

1 Ms. Denniston: Number Two, on the agenda, Your Honor
2 is the debt's summation for Order Pursuant to
3 9019 Approving Settlement Agreement among Debtor
4 Clark Fort & Black for Atlantic Richfield. We're
5 requesting that this be continued to May 17th.
6 The parties are in the process of finalizing the
7 second stipulation that we advised the Court of
8 at the last hearing.

9 Judge: So ordered.

10 Ms. Denniston: Thank you, Your Honor. Number Three on
11 the agenda is the Motion of Deutsche Bank for
12 Relief for Automatic Stay. Deutsche and the
13 Debtor are requesting that this be continued to
14 May 17th.

15 Judge: So ordered.

16 Ms. Denniston: Number Four on the agenda, Your Honor,
17 is the application to employ Price Waterhouse as
18 Business Consultants on this matter was continued
19 so that the Debtor and Price Waterhouse could
20 address issues raised by the US Trustee and
21 others regarding a potential conflict. The

1 resolution of that issue is that the Minneapolis
2 office of Price Waterhouse will not perform
3 litigation services for Northwestern and with
4 that we have an Order authorizing the retention
5 with limited terms of engagement, and I'd like to
6 hand that over.

7 Judge: Okay. Sign the order.

8 Ms. Denniston: Thank you're your Honor. As Mr. Austin
9 indicated, Item Number Five on the agenda is the
10 Motion for Order Extending Time with the Official
11 Committee of unsecured credits to investigate,
12 and we've requested that we put to the end of the
13 docket.

14 Judge: Okay.

15 Ms. Denniston: Item #6 is the Motion for Court
16 Approval to Assume Executory Contract between
17 Northwestern and Mid-American Energy. This Motion
18 follows the stipulation that was presented at the
19 February Omnibus hearing. A Certificate of No
20 Objection was filed on April 7th and we'd like to
21 hand up the Order at this time.

1 Judge: I signed the order.

2 Ms. Denniston: Thank you Your Honor. Item #7 is the
3 Motion of Magten Asset Management Corporation for
4 Order granting relief in the automatic stay. As
5 Mr. Austin indicated, we'd like to continue that
6 till the end of the docket.

7 Judge: So ordered.

8 Ms. Denniston: Item #8 is the Motion for Relief of
9 Automatic Stay by Hydro Dynamics. The Debtor
10 filed an objection that was joined by the
11 Committee. In connection with this Motion the
12 Debtor has proposed or has filed a motion to
13 assume the Hydro Dynamics contracts. That Motion
14 will be set for the omnibus hearing in May and we
15 also have filed a stipulation to continue this
16 motion to the next omnibus hearing.

17 Judge: So ordered.

18 Ms. Denniston: Number 9 is the Motion of the Debtor
19 for an Order Pursuant to 11USE Section 1121
20 extending the exclusivity period to solicit
21 acceptances of the proposed plan of

1 reorganization. A certificate of no objection was
2 filed on March 31st and we'd like to hand up an
3 order.

4 Judge: I signed the order.

5 Ms. Denniston: Thank you Your Honor. Matter #10 is the
6 Motion to appoint official equity security
7 holder's committee filed by RCG Copathia and
8 others. A number of objections were filed Your
9 Honor and at the request of the [?] this matter
10 is being continued to the May 17th hearing.

11 Judge: So ordered.

12 Ms. Denniston: Number #11, Your Honor, is the pretrial
13 conference regarded Amended Verified Complaint
14 against Carpenter Pension Trust by agreement of
15 the parties we're requesting that that be
16 continued to May 17th.

17 Judge: So ordered.

18 Ms. Denniston: Thank you Your Honor. Number 12 is the
19 Plaintiff's Motion for scheduling order. The
20 Plaintiff filed a request for a scheduling order

1 to set an evidentiary hearing. The debtor filed a
2 response concurring that we're requesting that an
3 evidentiary hearing be sat during the month of
4 July and that matter is going forward. I am not
5 sure whether there is anybody here on behalf of
6 the Plaintiff.

7 Judge: Yes, there is counsel here.

8 Counsel: Good afternoon. Maureen O'King of Skadden Arps on
9 behalf of Yellowstone Energy Limited Partnership
10 is a plaintiff, and I rise with []
11 listed ---- Skadden Arps Washington D.C. Office.
12 He's appearing telephonically. We've filed a pro
13 hoc admission for --- it's pending before the
14 Court.

15 Judge: Mr. Meaghen, how are you?

16 Mr. Meaghen: Your Honor, --- LLP speaking, first of
17 all, Thank you Your Honor for allowing me to
18 appear before and to digital telephonically
19 today. Should I get to the gist of what our
20 motion is about sir?

1 Judge: Yes, my question about this, was how much time
2 you needed in July. As I understood the parties'
3 position, it was once you had a time set in July
4 for a trial you'd be able to work backward in
5 terms of setting an appropriate schedule.

6 Mr. Meaghen: And this is our hope.

7 Judge: And so, my question was, and so I understood
8 there was a request by the parties for me to set
9 this matter for trial and I just need more advice
10 as to much time we're going to need to get this
11 done.

12 Mr. Meaghen: --- I was thinking, my belief would be that
13 we would need absolutely no more than a single
14 day and if the parties were to agree that direct
15 examination could go in by way of declaration or
16 some other means, I am confident that we have the
17 trial in less than a single day.

18 Ms. Denniston: The debtor concurs with that, Your
19 Honor.

20 Judge: Why don't we set a day now. Which day of the week
21 is that? Thursday? Wednesday. We'll set it for

1 Wednesday July 14th at 9:30. We'll set that for
2 the full day to avoid any difficulty. Does that
3 work for everybody?

4 Mr. Meaghen: -- that's fine your Honor.

5 Ms. Denniston: Your Honor would that be proceeding
6 here in Wilmington?

7 Judge: Yes, that's a week I'm here in Wilmington.

8 Ms. Denniston: Thank you, Your Honor.

9 Judge: Unless you all want to come to Phoenix in July.

10 Ms. Denniston: We might need less than a day.

11 Judge: Well, if we started 4 or 5 o'clock after the air
12 conditioning goes out, we may see how things
13 settle.

14 Ms. Meaghen: If I understand, Mr. Mead again, we [?] have
15 between us counsel to follow up and try to work
16 backwards and submit an agreed order. If by any
17 chance, we are not able to agree upon schedule to
18 get us to July 14th, would be there a time where
19 we might be able to a very brief telephone

1 conversation with Your Honor, to resolve any
2 issue Your Honor?

3 Judge: Assuming that occurs, you just need to contact,
4 call the Deputy here, and we'll set something up.

5 Mr. Meaghen: Thank you very much Your Honor.

6 Ms. Denniston: Your Honor, there are two housekeeping
7 details as we've reached the end of the agenda.
8 The first one is the stipulation that we
9 previewed for the Court at the last hearing. This
10 involved the agreement of the debtor to mediate,
11 the what has been called the McGreevy Litigation,
12 and we have done a limited stipulation to enlist
13 automatic stay to allow that mediation to
14 continue or to proceed. This arises out of
15 certain litigation pending in Montana and the
16 Federal District Court out there has requested
17 that we have our order listing the automatic stay
18 for the purpose of mediation and so that
19 mediation can proceed. I'd like to hand up an
20 order if that's appropriate.

21 Judge: I've signed the Order.

1 Ms. Denniston: Thank you Your Honor. Another, I have
2 two other small housekeeping matters. The debtor
3 has requested or has filed on regular notice, a
4 motion to retain the Paul Myer firm to deal with
5 execution compensation and board of director
6 compensation issues, and had requested a special
7 setting on that. The issue there being that it's
8 the debtor's request that that work begin and the
9 request of Pearl Meyer that an order be entered
10 before work actually starts, given the timing of
11 the case, as we move for the disclosure statement
12 the need for the information we'd like to be able
13 to get a special setting, if the Court could
14 accommodate that.

15 Judge: Tell me what time you're looking.

16 Ms. Denniston: We would be more than willing, Your
17 Honor, to come to Phoenix. We don't anticipate
18 that it would take long at this point. We haven't
19 gotten any indication that there'll be any
20 objection to the application so something. I
21 understand the committee has comments to the
22 application. We would work through those as we
23 have in the past. I hope we'll be able to resolve

1 them, but we were looking for something, either
2 at the end of this month or the first part, first
3 week in May, either Tuesday or Wednesday of that
4 week, we can set something. I think Tuesday we
5 kind of filled up yesterday, didn't we? So maybe
6 we'll set something on Wednesday, we can get you
7 a specific date and time, after I consultant with
8 my call him Deputy in Phoenix.

9 Ms. Denniston: Thank you Your Honor.

10 Judge: If that's sufficient, then you notice it out.

11 Ms. Denniston: Yes we will, and thank you Your Honor,
12 we appreciate the Court's accommodation. The last
13 [?] matter is a stipulation that..

14 Judge: And depending on how contested that is, we could
15 do the whole thing by telephone if that's what
16 parties want to do.

17 Ms. Denniston: Thank you, Your Honor.

18 Judge: I'll leave to the parties to decide if it's a
19 matter that they want to be heard in person,
20 whether they travel to Phoenix.

1 Ms. Denniston: Thank you. The last housekeeping
2 matter is a stipulation, an order regarding the
3 stay of proceedings with respect to Rodger and
4 Carol Ror's motion for withdrawal of reference.
5 This stipulation provides that this matter will
6 be stayed both here and at the district court
7 level till all the parties were settlement. I'd
8 like to hand out this stipulation and the order
9 at this time.

10 Counsel: Your Honor, no grounds for Roger & Carol Ror. I
11 just here we wish to stipulate this matter
12 probably will be resolved by the parties at
13 Global.

14 Judge: I signed the order.

15 Ms. Denniston: Thank you Your Honor.

16 Counsel: With that, may I be excused your Honor.

17 Judge: Of course.

18 Ms. Denniston: Your Honor that leaves number 5 and
19 number 7, these are the motions filed by Magten
20 Asset Management Corporation.

1 Judge: Now before we get to that, I've got a short
2 housekeeping matter I want to bring up. I
3 understand that there was a request made to the
4 Courtroom deputy that we set a regular second
5 hearing a month in Phoenix. Am I correct about
6 that? I had heard that I think your local
7 counsel. Am I right Ginger? The local counsel had
8 made such a request. I simply wanted to say that
9 in the comment that we received was something
10 along the lines that a case like this has more
11 than one hearing, and so we want to have more
12 than one hearing. In this case, and in others, I
13 have been as accommodating as I've been able to
14 be based on my calendar there to have hearings
15 and if in fact the counsel here conclude that
16 that's necessary, and - this sort of matter it
17 should be brought up at one of these hearings or
18 at a hearing rather than requests made to the
19 Courtroom deputy. I see everybody puzzled, but
20 that certainly is... Mr. Chipman made that
21 request.

22 Ms. Denniston: Your Honor there was a great deal of
23 confusion with regard to the Pearl Myer

1 application in getting that for hearing. Now
2 that's now been resolved and I suspect that
3 there's been some sideways communication. AT this
4 point I think you can tell that the parties in
5 the courtroom have not anticipated a second
6 omnibus hearing in Phoenix.

7 Judge: Right, and I just want to understand that if
8 that's ever really necessary to transact the
9 business of the case, then all you have to do is
10 make that case to me, but I think it ought to be
11 made to me, not necessarily through the courtroom
12 deputy because she doesn't really know what my
13 availability is or whether I'd be willing to set
14 another hearing, it's just a matter that can be
15 done on notice pretty simply.

16 Ms. Denniston: Thank you, Your Honor we'll take care
17 of that.

18 Judge: Alright, then, let's go back to Item #5.

19 Counsel: Your Honor.

20 Judge: And item number 7.

1 Counsel: I apologize, Ed Morton from Young Conaway on
2 behalf of the Touch America debtors. To briefly,
3 if I may, turn the Court's attention back to
4 number four. I merely wanted to place in the
5 record, we were one of the other parties that had
6 formally commented on this application. Price
7 Waterhouse Coopers is also a retained
8 professional at our bank which a case that was
9 filed last summer. We have had discussions with
10 Price Waterhouse Coopers and with the debtors,
11 and our sense of the motion was based on not any
12 representations regarding the Minneapolis office
13 and their involvement, but based upon the limited
14 scope of Price Waterhouse Coopers engagements on
15 the [Sarban's?] - the issues. With that, we do
16 not have any opposition to the order, and haven't
17 been entered, we merely want to make sure that
18 our concerns were on the record.

19 Judge: Thank you.

20 Morton: Thank you.

21 Counsel: Good afternoon, Your Honor, William Burnett,
22 BlancRone on behalf of Magten Asset Corporation.

1 I have here with me today, I have a co-counsel,
2 Bonnie Steingart and Garg Kaplan from the Fried
3 Frank firm and we'll be addressing items number
4 five and number seven on Your Honor's agenda.

5 Steingart: Good afternoon, Your Honor. I'm Bonnie
6 Steingart from Fried Frank, and I would like to
7 address both of Magten's issues. If it's
8 acceptable to the Court, I'd like to first
9 address the list stay motion so that Magten could
10 proceed with an adversary against the debtor in
11 connection with its claim that the transfer of
12 the assets from Clarkfoot and Northwest LLC to
13 the debtor constituted a fraudulent conveyance
14 under Montana Law.

15 Counsel: Your Honor, I'd like to provide just a moment to
16 at least make --- (pause).. I'm asking counsel
17 were there - evidentiary show in this why part of
18 this will recriminate was other - parties.

19 Steingart: Well, I think that the Court does have a
20 number of documents that have been attached to
21 the pleadings and that in light of that, and in
22 light of the other factual material that's

1 already before the court, I believe that we can
2 go directly to argument.

3 Counsel: -- Your Honor is that case law doesn't seem
4 controlling here, and we can - the court's
5 attention to the cases of Son and Industries [?]
6 at 907F2nd 1280 as well as the cases of Pioneer
7 Commercial Funding Corporation with his 114
8 bankruptcy -45 simply require that a movement
9 seeking relief in a stay for a cause has the -
10 showing that and they must make a prima facie
11 case for moving forward, and I think that well
12 require some - level of evidentiary presentation.

13 Judge: Well, why I don't decide that after I hear the
14 presentation of counsel, and if I agree, then we
15 may not get it resolved today.

16 Counsel: Thank you, Your Honor.

17 Ms. Steingart: As official matter, Your Honor, the
18 debtors did put in an objection to the motion and
19 did not indicate that they thought there was any
20 lack of batch or foundation for our request that
21 the State, they listed for cause.

1 Judge: That doesn't relieve you of your burden.

2 Ms. Steingart: Yes, Your Honor.

3 Judge: Your burden is what it is..

4 Ms. Steingart: It is.. Your Honor.

5 Judge: And I'd like to know how you think you meet your
6 burden and then we'll decide whether or not if an
7 initial instant addition is necessary.

8 Ms. Steingart: Thank you Your Honor.

9 Judge: Okay?

10 Ms. Steingart: Well, I'd like to say that as an
11 initial matter, we believe that to the extent
12 that we are seeking to have an adversary
13 proceeding against the debtor in this court that
14 to a large extent ,there really is not an
15 necessary for a list stay motion. There was
16 authority for the composition that to the extent
17 that this is a matter for this court and it
18 involves assets that are purportedly part of the
19 debtor's estate and we'd made a claim and the

1 debtor has included these assets as part of the
2 estate that it's distributing in its plan, that
3 an adversary proceeding against the debtor here,
4 where it's convenient, where these issues will be
5 resolved at some point in this case is entirely
6 appropriate and not subject to the stay. Indeed,
7 in the response of papers filed by the debtor
8 here, the response was, well, you know, this is a
9 claim issue, we should be looking at this issue,
10 later in this case, at the time of distribution
11 because what you're saying is that the assets get
12 distributed to you and not to the others. Well,
13 you know, that on its face, is...

14 Judge: Why we don't back up a little bit ..

15 Ms. Steingart: Sure.

16 Judge: .. and make sure we're all on the same page.

17 Ms. Steingart: Uhm hum.

18 Judge: And explain to me the relationship of your client
19 to Clark fort and to the debtor, and explain to
20 me, I read the papers, I just want to hear this
21 again. What it is you're seeking to accomplish

1 here, on behalf of your client. I understand you
2 want to file a fraudulent conveyance. What would
3 be the result of a fraudulent conveyance lawsuit
4 for it to be successful?

5 Ms. Steingart: Well, our view is that one of the
6 results of the fraudulent conveyance lawsuit if
7 we were successful would be that these assets
8 that were transferred from Clarkfort to the
9 debtor.

10 Judge: This is an unusual case in the case that you're
11 not talking about a fraudulent conveyance where
12 the debtor has fraudulently conveyed to a third
13 party and you're seeking to bring something back
14 into the state. What you want to do here is you
15 believe that the fraudulent conveyance went to
16 the debtor.

17 Ms. Steingart: Right.

18 Judge: And that it ought to come back out of the estate,
19 for the benefit of ...

20 Ms. Steingart: A creditor.

1 Judge: For the - of the creditors, although the debtor's
2 argument is, is that you're no longer a credit at
3 that level, you're a creditor at the debtor
4 level, so your claim to the extent that you have
5 one is against the debtor because under the
6 indenture, that's where the claim went and
7 Clarkfort was relieved of the obligation, so I'm
8 just trying to get the lay of the land.

9 Ms. Steingart: Sure.

10 Judge: If I just had the lay of the land here, you think
11 you're still the credit at the Clarkfork level,
12 in effect.

13 Ms. Steingart: Right.

14 Judge: And that you now look at Clarkfork and say, it no
15 longer has these assets, that out of which we
16 want to collect our debt. That those assets now
17 are in the debtor so ... (pause)... the
18 fraudulent conveyance was made by Clarkfork to
19 the debtor. We want to get those assets back so
20 that they could be used to pay our claim.

1 Ms. Steingart: Right, well, yeah, with two things. One
2 is indeed we still think that we are a creditor
3 of Clarkfork and we believe that we are a
4 creditor of Clarkfork because it remains jointly
5 and severally liable on our guarantees, that
6 distributions will be made from x account to the
7 holders of these - or to the debentures. And
8 Clarkfork is still a guarantee, and so jointly
9 and severally liable on making payments from
10 account, and it's our view that that account is
11 emptying and has nothing in it to distribute
12 because of the fraudulent conveyance. But Your
13 Honor there is a second ground here.

14 Judge: So it was the economic impact of what you're
15 talking about here is you want it to be a
16 creditor with a claim against a pool as to which
17 other creditors don't have a claim thereby
18 increasing your return against that pool rather
19 than if you're treated as a creditor of
20 Northwestern where these assets then up and up
21 and your claim gets diluted. Is that what
22 happened. Am I right about that or wrong?

1 Ms. Steingart: So the extent that a successful result
2 of our litigation would be that we would be a
3 member of the classes that receive distribution
4 from this debtor, we would receive less than 100
5 cents on the dollar. To the extent that, so as
6 the debtor puts in its papers, well, look if they
7 win, they're just going to be part of Class 7,
8 Class 9, whatever and get a distribution, so we
9 should, you know, do this later, so to the extent
10 that we were named creditors and our position was
11 improved vis a vie the debtor, yes, that's true.
12 To the extent that these assets will become
13 assets of Clarkfork, then what we would get 100
14 cents on the dollar would really depend on what
15 the other competing claimants were, who the other
16 competing complaints were, but our view is that
17 we would probably get a full recovery. Our
18 argument here though is not that, gee, somehow we
19 should get a 100 cents on (pause) dollar rather
20 than 75. Our claim here is that we are utterly
21 out of the money because of the way in which
22 these conveyances occurred and it's that
23 conveyance that was what we consider to be the
24 fraud.

1 Judge: But how are you out of the money if in fact
2 you're a creditor of Northwestern? --- and like
3 all creditors who are similarly situated are out
4 of the money.

5 Ms. Steingart: Yes, they are. We're out of the money
6 because when these assets were transferred to
7 Northwestern, Northwestern's creditors stood on
8 line before us, when tehse assets were
9 transferred to Northwest, these assets
10 unfortunately did not succeed in making Northwest
11 an entity that could pay the claims, that could
12 pay the creditors that had before the transfer
13 and certainly not the creditors that it acquired
14 as part of the transfer, and that's why in some
15 way the argument that somehow we are not a
16 creditor of Clarkfork is circular and proves too
17 much because what the debtor is saying is all you
18 have to do when you do a fraudulent conveyance
19 and we, you know and we should with a mind that
20 this was a conveyance between entities that were
21 affiliated, that the debtor controlled the entity
22 from which it received the conveyance, and all
23 the debtor need do, if it wants to - is the

1 bringing of any fraudulent conveyance claim is
2 convey the creditor along with the asset and
3 poof, it's gone, and that seems to me you're on
4 it to prove too much. Here, because of the kind
5 of conveyance we have, that once we bring the
6 claim, if we are, if we can show that it was a
7 fraudulent conveyance and the transaction is
8 unwound, we are also on that ground as well a
9 creditor of Clarkfork and if the debtor indeed
10 engaged in a fraudulent conveyance here, it
11 should not be able to hide behind the fact that
12 it also conveyed the liability. When it conveyed
13 a liability to a company that no ability to pay
14 it, from a company that had every ability to pay
15 it, and that's why we think we should be entitled
16 to bring that claim, and indeed, bringing it in
17 the context of this proceeding is certainly
18 convenient for the debtor. There are other
19 claimants through our claiming around this claim
20 so that it will eventually have to be decided,
21 and if we list all our complaints and then in the
22 court get this matter before it and decide it so
23 that if and when a plan is confirmed, the issues
24 with respect to these assets are resolved. It's

1 in everybody's interest, so that one, we don't
2 think that there is a real standing argument, but
3 even there is, Your Honor, let's file the
4 adversary and let them make the motion to
5 dismiss. You know, it's not a frivolous claim on
6 any stretch of the imagination and as a technical
7 matter, the trustee has indicated that it would
8 join the adversary as a plaintiff so that it's
9 not only Magten but the trustee under the
10 indenture, who will be a plaintiff in that
11 lawsuit. And the last thing that I would just
12 like to bring to the Court's attention. There's
13 some argument in the papers filed by the debtor
14 that constructive trusts are somehow vulnerable
15 to the strong arm powers of the debtor or the
16 trustee. There was a case decided by Judge
17 Walrath in February 2004 which differentiated in
18 terms of the reach of this strong-arm property
19 and real estate and we believe that the divisions
20 between personal property and real estate and we
21 believe that to the extent that a number of the
22 assets are subject, may be personal property
23 other than real estate that the avoidance claims
24 do not pre-empt the constructive trusts and that

1 was Judge Walrath's holding, the name of that
2 case is Inri DBI Inc. and I only have the Westlaw
3 version which was 2004 Westlaw 415293 if I could
4 provide it to the Court I'd be happy to do so.

5 Judge: Tell me, the cite again.

6 Ms. Steingart: Okay, it's 2004 WL 415293.

7 Kortanek: Good afternoon Your Honor. My name is Steve
8 Kortanek, and I'm with Klechic Harrison. We are
9 co-counsel for two creditor constituencies, one
10 is the McGreevey Class Action Claimants and
11 appearing with me on the telephone today is Allan
12 McGarvy who is Class Counsel for that
13 constituency. Also we represent Commanchy Park
14 (?0 who is a member of the committee. We filed
15 joinders to the Magten list stay motion and so
16 those - speak for themselves. I don't want to put
17 Mr. McGarvey on the spot but in connection with
18 McGreevey litigation and which seeks the
19 fraudulent transfer relief effectively in
20 Montana, he wishes to address the Court for this
21 motion or the related Magten motion. We'd now

1 believe for him to do so, we did know the ---.

2 Thank you Your Honor.

3 McGarvey: This is Allan McGarvey.

4 Judge: Alright.

5 McGarvey: Your Honor, we represent --- Class
6 settlement shareholders of the former Montana
7 Power Company. Our claim against the Montana
8 Power Company was it breached its duty in selling
9 all or substantially all of its assets with the
10 result that the shareholders lost 3 billion
11 dollars. During the - of our action, Montana
12 Power Company was merged into Northwestern Energy
13 Oil - which entity was purchased as a fully owned
14 subsidiary of Northwestern corporation is now
15 known as Clarkfork in Black--- The Montana Court
16 held that Northwestern Energy is the successor to
17 the Montana Power liabilities, and issued an
18 order enjoining Northwest Energy not to transfer
19 the Montana utility assets. The newer (?) company
20 moved to add the parent corporation Northwestern
21 as an additional party, but the Court sustained
22 our objection that the assets should remain with

1 the subsidiary, in North --- represented to the
2 McGreevy Class Counsel into the Montana Court
3 that the Montana Utility assets would be held by
4 North, so that any extradition of judgment in our
5 action against - would not be served in North.
6 Further stipulated Northwest further stipulated
7 it be subject to the jurisdiction of the Montana,
8 heretofore any judgment against the Montana Power
9 Company in its successive Northwestern Energy and
10 applying that representation the Court admitted
11 the upstraining (?) transaction. We have two
12 claims towards the claim to have Northwestern on
13 their stipulation to be --- or any judgment
14 against the subsidiary, but second we have
15 submitted a constructive cause (?) claim and that
16 claim includes several bases including that the -
17 -- transaction was a fraudulent transfer which
18 left Northwestern Energy in - and second, the
19 representation to the McGreevey tie-up into the
20 Montana Court that the assets would be as
21 available for imposition created a constructive -
22 for that interest. We joined in the motion for
23 list (?) today in order to address whether the -

1 screens are properly part of the debtor estate,
2 that's the fundamental - of reorganization.

3 Judge: Are we talking about the same assets?

4 McGarvey: The same assets which are the Montana
5 utility, the purpose of the proposed adversarial
6 action which we wish to participate in is to
7 establish what is the property of the state and
8 if objection to our joinder, Northwestern argues
9 that a fraudulent transfer claim must be
10 prosecuted by the debtor, but, and of course that
11 would be true in a claim to recover assets
12 fraudulently transferred by the debtor, but it is
13 clearly wrong with respect to a claim that assets
14 were fraudulent transferred to the debtor. Every
15 credit - that has addressed this issue and there
16 are at least seven such cases, Your Honor, has
17 held that if a debtor holds property which is
18 subject to constructive trust, the equitable
19 interest of such trust is excluded from the
20 estate. Northwestern next argued that our
21 fraudulent transfer claim is really a general
22 unsecured credit --- because the only matter to
23 be addressed is the classification and treatment

1 under the claim's sponsor. The - argues that the
2 constructive trust are imposition of the
3 constructive trust is fundamentally at odds with
4 the bankruptcy policy of - redistribution (?) and
5 cites the Inray Nabeth case (?) decision of the
6 Delaware District Court in Inray called --- and I
7 think the Inray Paul Paradine Inc. (?) is very
8 instructive, Your Honor because it does hold that
9 a constructive trust does exclude the property
10 from the estate, the Delaware Court further held
11 that the excuse that the Omages (?) Court held
12 that a constructive trust does not --- that
13 previously exists in a judicial proceeding. It
14 was an error and that the policy of graduable
15 distribution does not prompt the equitable trust
16 law. Then that court went on to hold that not
17 withstanding constructive trust is the assets out
18 of the estate, the assts could be got back in
19 under the --- mark - in the case of a bonified
20 purchaser of real property, but that is not the
21 issue here because the vast majority of these
22 equally traceable assets are not real property,
23 and so we then turn to what happens with the
24 strong arm powers in the case of non real

1 property and that issue was resolved by Judge
2 Walrath in his decision that cancels the --- the
3 last point I'd like to make has to suggest that
4 the cause and that's the suggestion that we don't
5 have need to bring adversary proceedings, and I
6 would like to cite the Court to the holding of
7 the Fifth Circuit Court of Appeals in the case of
8 Enray Abar Oil vs. Lionheart (?). The cite is 12
9 - 3rd 426, so that's - opinion in 1994, to which
10 the Court - that if such a claim, the circuit
11 trust claim was to be got it was and according to
12 and incumbent on the debtor to file an adversary
13 procedure use of bankruptcy court. That's what
14 we're required to do and that's what we set to do
15 by this motion to ---.

16 Judge: Well, you don't seek to do that. You don't seem
17 to have the debtor file the case. Right, I mean
18 you seek to file the case yourself.

19 McGarvey: That's right, we seek a list stay so that
20 the adversary proceedings can be brought this
21 week --- we - to intervene and enjoin with the
22 case.

1 Judge: With the result being that with the attendant
2 result would be the return of the Montana Power
3 Assets, is that what you're looking for?

4 McGarvey: Yes, it's so the assets, if we prevail in
5 our contention that those assets were
6 fraudulently transferred or otherwise or - they
7 are not property of the estate.

8 Judge: Now, If it were to turn out the other way, that
9 is to say that the assets stay at the
10 Northwestern Corporation level, at the debtor
11 level, what then happens to your litigation?

12 McGarvey: Well, assuming we lost in our adversarial
13 actions, Inde would be left with a claim against
14 Northwestern based upon Northwestern's
15 stipulation to be bound for any liability in our
16 favor against the subsidiary. So our claim would
17 be enforcement of that stipulation.

18 Judge: Well, given the litigation that's gone on and the
19 protection that you say you've been given by the
20 Montana Court in terms of the, as a condition to
21 upstraining the assets, why haven't you brought

1 this case? Why aren't you the prime plaintiff
2 rather the Magten?

3 McGarvey: Well, Your Honor, I particularly respond
4 that they beat us to the punch. Pulling - brings
5 us - and it could not be a greater - in a way.

6 Judge: And your action may be somewhat different from
7 their action, there may be additional issues,
8 because you have these prior rulings in the
9 Montana case upon which you say you can rely that
10 give you rights in terms of a constructive trust
11 against this property that Magten may not have.
12 Magten's argument may be simply, look, we're a
13 creditor who is damaged because this transfer
14 took place without adequate consideration.

15 McGarvey: That's it, Your Honor. We hear the argument
16 that the transfer was fraudulent in that it
17 rendered the subsidiary insolvent and was without
18 consideration, but we have additional argument
19 imposed on the -

1 Judge: Alright, thank you. Anybody else on the pro side
2 want to be heard before we hear from the con
3 side? What side are you on Mr. Kornberg?

4 Mr. Kornberg: I'm a little puzzled. But I think I'm kind
5 of in the middle. Alan Kornberg for the official
6 creditor's committee. Your honor, the, first of
7 all we filed a limited response that the credit
8 committee did, and that limited response was in
9 response to the motion that was filed by Magten
10 and I think we agreed completely with Your
11 Honor's observation which is that to the extent
12 that there may be other creditors of Clarkfork
13 and Blackfoot, they have different kinds of
14 claims and I think they have to be looked at
15 individually and I can say that the creditor's
16 committee has just begun the process of
17 considering claims that the McGreevey Class may
18 have and their effect on this estate, but from
19 what I've what I've heard to date, I think they
20 are quite different from Magten. The committee's
21 position with respect to Magten is that Magten's
22 - command's allegations really are at the heard
23 of the relief that seeks in this Court today, not

1 only with respect frankly to this motion for
2 relief from the stay, but also the motion that
3 you'll hear next which relates to issues
4 involving the validity of the claims and liens of
5 Credit Suisse First Boston. The Committee's view
6 is that we should get to the heart of that issue.
7 The committee has investigated substantially the
8 claims that Magten has made and we disagree that
9 Magten is a creditor of Clarkfork and Blackfoot
10 We read the indentures that govern those
11 instruments to provide that upon the transaction
12 that took place that resulted in Northwestern
13 assuming the liabilities of what is now known as
14 Clarkfork and Blackfoot and in return getting the
15 assets of that entity, that by the terms of the
16 indentures with no further action required that
17 the Northwestern, the debtor became the obligor
18 and Clarkfork and Blackfoot was released from
19 liability. I think that word in the indenture is
20 the structural liability. So what the committee
21 would like to see.. helpful argument that...

1 M: Continuing guarantee.

2 M2: Your honor, the continuing guarantee I think even
3 Magten's Council would admit that the guarantee
4 claim, if one exists, and that's debatable, but
5 let's assume, for purposes of today, that the
6 guarantee remained extant, because the language I
7 think is a little less clear, that guarantee
8 claim is for zero, because it guaranteed only
9 that the debtor would cause certain funds that
10 were a particular account to be paid over, as
11 council for both the debtor and Magten stated,
12 there was a zero in that account. The way the
13 committee looks at this issue is as follows, even
14 if there was a guarantee claim that was extant
15 against Clarkfork and Blackfoot, the claim amount
16 is at zero. A fraudulent conveyance claim would
17 only be in aid of satisfying an unsatisfied
18 creditor, if that claim, if the creditor had to
19 claim a zero, you don't need a fraudulence
20 conveyance claim, a relieve to satisfy the claim,
21 'cause it's obviously, it doesn't warrant
22 satisfaction. We believe, the creditors can be
23 as a very simple objective, we want to see this

1 company emerge from Chapter 11 as soon as
2 possible. The general insecure creditors of this
3 estate are the owners of this company, which is
4 grossly insolvent and we want to see a
5 reorganization promptly, and we want to address
6 the issues that need to be solved. We think that
7 the relieve from the stay, if say relief is
8 granted, if say relief is needed should be
9 granted, we would like address on expedited
10 bases, a threshold question, "Is Magten a
11 creditor of Clarkfolk and Blackfoot or not?" And
12 if it's not, and they don't have standing as a
13 creditor of that entity, they don't have
14 fraudulent conveyance claim.

15 M: Well if ah, would it make difference if the
16 indentured trustee was a creditor, excuse me, was
17 a plaintiff, or does the fact the indentured
18 trustee would be treated the same way?

19 M2: Ah, Your Honor, I believe they would be treated
20 exactly the same way...

21 M: Then what about McGreevey...?

1 M2: Now McGreevey I think is a whole different...

2 M: I mean the McGreevey plaintiffs said they want to
3 join in, and they said they want to seek to
4 intervene in this, I asked them the question
5 point blank, "Why aren't you the prime
6 plaintiff?" And the suggestion from council was,
7 "Well, we thought we were going to be, but it
8 turns out somebody else was punished." Now that
9 threshold issue you're talking about with regard
10 to Magten, would not exist with regard to
11 McGreevey, because you don't have the terms of
12 the indenture that are actually governing the
13 status of that particular creditor. There may be
14 other issues that are wholly separate, but at
15 least that issue would not be a threshold.

16 M2: You're exactly right Your Honor, I think the
17 joiners is very poorly taken, because I think
18 it's a completely different case. I think when
19 you get to McGreevey, again I think when we talk
20 about these fraudulent conveyance claims, in a
21 sense we're putting the cart before the horse,
22 and the reason I say that is, as Your Honor
23 pointed out at the beginning, the fraudulent